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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Ukraine

Report to the State Party * ** ***

* In accordance with the decision of the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, the present report was transmitted confidentially to the State party on 6 June 2011. On 14 March 2016, the State party requested the Subcommittee to make the report public, in accordance with paragraph 2 of article 16.

*** The annexes to the present report are distributed in the original language only.

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I. Introduction

1. In accordance with articles 1 and 11 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Subcommittee on Prevention of Torture (SPT) conducted a visit to Ukraine from 16 to 25 May 2011.[1]

2. The SPT was represented by the following members: Malcolm Evans (Chairperson and Head of Delegation), Mari Amos, Arman Danielyan, Lowell Patria Goddard, Zbigniew Lasocik, Aisha Shujune Muhammad, Hans Draminsky Petersen, Maria Margarida Pressburger, and Víctor Rodríguez-Rescia.

3. The SPT was assisted by Patrice Gillibert (Secretary of the SPT), Dmitri Alechkevitch, Yulia Babuzhina, and Michelle Kierulf, from the Office of the United Nations High Commissioner for Human Rights (OHCHR). In addition, the SPT was assisted by Dmitry Cherepanov and Andrej Putintsev (United Nations Field and Security Officers), and six interpreters.

4. During its visit to Ukraine, the SPT observed the treatment of persons deprived of their liberty in a broad range of institutions in different parts of the country.[2] Unless otherwise noted, the SPT considers that its findings reflect the general situation of persons deprived of their liberty in the State party.

5. Whilst not all places visited are mentioned in this report, the SPT reserves the right to comment on any place visited in its future dialogue with the State party. The absence of any comment in this report relating to a particular institution visited by the SPT does not imply either a positive or negative finding in relation to it.

6. In addition to visiting places of detention, the SPT held meetings with government authorities, with the United Nations system in the country, and with members of civil society.[3] The SPT wishes to thank them for the valuable information provided.

7. At the conclusion of the visit, the SPT presented its confidential preliminary observations orally to the Ukrainian authorities.[4] In the present report, the SPT presents its findings and recommendations concerning the prevention of torture and ill-treatment of persons deprived of their liberty in Ukraine. This report uses the generic term "ill-treatment" to refer to any form of cruel, inhuman or degrading treatment or punishment.[5]

8. The SPT requests the Ukrainian authorities to provide it with a follow-up response within six months from the date of transmission of this report, giving a full account of the State party's actions taken to implement the recommendations.

9. The present report will remain confidential until such time as the Ukrainian authorities decide to make it public, as stipulated in OPCAT article 16(2). The publication of this report, and of reports adopted by the CPT, will undoubtedly serve as an additional means for preventing torture and ill-treatment in Ukraine, as the SPT considers that the

[1] The SPT was established following the entry into force of the OPCAT. For more information about the SPT, please consult the webpage: http://www2.ohchr.org/english/bodies/cat/opcat/index.htm.

[2] See Annex II.

[3] See Annex I.

[4] The preliminary observations were transmitted to the State party in writing on 9 June 2011.

[5] In accordance with article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

widespread dissemination of the recommendations would contribute to a transparent and fruitful national dialogue regarding the criminal justice system within Ukraine.

10. The SPT wishes to draw the State party's attention to the Special Fund established in accordance with article 26 of OPCAT. Recommendations contained in public SPT visit reports can form the basis of an application by the State party for funding of specific projects through the Special Fund.

11. The SPT recommends that Ukraine requests the publication of the present report in accordance with OPCAT article 16(2). The SPT further recommends that Ukraine requests the publication of the CPT's report on its visit in 2009.

12. The SPT wishes to express its gratitude to the Ukrainian authorities and, in particular, the Ukrainian governmental focal point for the visit, Valeriya Lutkovska, Ministry of Justice, and her staff, for their positive cooperation and facilitation of the visit.

13. Further details about the SPT's concerns regarding access and preparation of the visit are contained in the confidential preliminary observations.

II. National Preventive Mechanism

14. Ukraine should have established or designated a National Preventive Mechanism (NPM) at the latest one year after ratification and entry into force of the OPCAT. Although some efforts had been undertaken to determine the model of the NPM, including the elaboration of a draft Presidential Decree, at the time of the SPT visit the Ukrainian NPM had not been created. In its Preliminary observations the SPT had expressed its views on the draft Presidential Decree, in particular, that the draft provisions of the decree were not in conformity with article 17, and did not reflect the SPT Guidelines on NPMs[6] and the Paris Principles.[7]

15. In this connection, the SPT regrets that the Ukrainian authorities have not responded to the offer of further assistance and advice concerning the establishment of an NPM that the SPT had extended in accordance with OPCAT article 11 (b)(i). Furthermore, the SPT had recently learned that the Presidential Decree establishing the Commission on the Prevention of Torture as an advisory body under the auspices of the President had been finally signed.

16. The SPT urges the Ukrainian authorities to take fully on board the concerns raised in its Preliminary observations. In line with the principle of cooperation and constructive dialogue with State parties and in conformity with the article 11 (b)(iv), the SPT expresses its willingness to further assist the State party, by means of a prompt advisory visit, which would seek to make recommendations and observations with a view to strengthening the capacity and the mandate of the designated NPM.

III. Overarching issues

17. In addition to examining the specific situation of persons deprived of their liberty in different types of institutions (Chapter IV), the SPT examined a number of overarching systemic issues relating to the treatment of persons deprived of liberty. These issues are addressed in sections A-F.

[6] The SPT guidelines on national preventive mechanisms, CAT/OP/12/5.

[7] The Principles relating to the status of national institutions for the promotion and protection of human rights, known as the "Paris Principles", annexed to General Assembly resolution A/RES/48/134.

A. Legal framework

The criminalization of torture

18. The SPT considers that the legislative prohibition of torture has several weaknesses. Ukrainian authorities continued to perceive the application of articles 127 and 365 of the Criminal Code to be compliant with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Amongst its concerns regarding the definition of torture under the current national legislation, the SPT would like to mention in particular the absence of the "public official" as comprising an element of the definition, as well as the restriction of torture to include only suffering as a result of physically violent acts.

19. As a State party, Ukraine is bound by the definition contained in UNCAT article 1. The SPT believes that defining the offence of torture in accordance with article 1 fulfils a preventive function and that discrepancies between domestic law and the definition contained in UNCAT article 1 can create actual or potential loopholes for impunity.[8] Domestic legislation should provide for investigation, prosecution and punishment of any act of torture or ill-treatment. Furthermore, the severity of the penalties for such acts should match their gravity. The SPT received information that torture and ill-treatment were de facto prosecuted under article 365 of the Criminal Code – if at all, as there were few recorded prosecutions and convictions.

20. The SPT recommends that the provisions regarding the definition of torture be brought fully into compliance with the Convention. In addition, the SPT recommends that an overall revision of the legal framework relating to the prevention of torture and ill-treatment take place, bringing it in line with Ukraine's international human rights obligations. Finally, the SPT recommends that the offence of torture be prosecuted under the provision relating to torture, and not as abuse of power, and that acts of torture or ill-treatment be punishable by penalties commensurate to their gravity.

B. Institutional framework

21. The prevention of torture and ill-treatment in places of deprivation of liberty is the shared responsibility of several institutions working in the field of administration of justice, including the police, the public prosecution, the legal aid system, the judiciary, and the State Penitentiary Service, as well as any other authority with jurisdiction to detain persons. The SPT is concerned that the current institutional framework in Ukraine does not provide for a sufficiently robust protection against torture and ill-treatment.

1. Police administration

22. In light of serious allegations received (see Chapter IV), the SPT was alarmed to note that the police apparently continued to be under informal pressure to ensure that a high number of crimes were solved, which encouraged the practice of extracting confessions. The SPT met persons who had confessed to up to 10 different crimes. The SPT welcomes statements made by the Minister of Internal Affairs in April 2011, indicating the official intention to reduce the emphasis on crime solving rates. The SPT noted that the police force is reportedly underfunded, and officers earn very low wages.

[8] General comment No. 2 of the Committee against Torture, CAT/C/2, para. 9.

23. The SPT recommends that the Ministry of Internal Affairs issue an official order, prohibiting the setting of crime solving rates for the police, and develop an action plan to tackle the negative culture which their use has generated.

24. The SPT recommends that the State party ensures that there is an appropriate budgetary allocation which is sufficient to ensure that the police force is comprised of well-motivated, appropriately salaried staff, sufficiently trained in modern forensic investigation techniques, and with a proper awareness of human rights approaches. Internal monitoring mechanisms should be put in place to ensure officers' compliance with international human rights standards.[9]

2. General Prosecutor

25. The SPT remains gravely concerned by the multiplicity of roles undertaken by the public prosecutor in (a) conducting criminal investigations, (b) overseeing the legality and human rights compliance of those investigations, and (c) discharging responsibility for the prosecution of persons formally accused. Furthermore, public prosecutors reportedly continued to rely heavily on suspects' confessions in fulfilling their work.

26. Echoing recommendations of other international bodies,[10] **and regional mechanisms,**[11] **the SPT recommends that the multiple roles of the public prosecution be revised, with a view to enhancing the independence of the prosecution's investigations of allegations of torture and ill-treatment.**

27. The SPT further recommends that the State party develop appropriate training of prosecutors to effectively clarify their role vis-à-vis other relevant institutional actors, i.e. police investigators and the judiciary. Such training should include, inter alia, (a) the need to reduce reliance on confession evidence and (b) the obligation to report torture or ill-treatment. The work of the prosecution must fully respect international human rights standards.[12]

3. Free legal aid

28. Through interviews conducted with persons deprived of their liberty, the SPT found that an effective free legal aid system was lacking in Ukraine. National legislation provides for free legal assistance if a defendant is unable to pay for a lawyer. However, most interviewees who were unable to pay for a lawyer had not been provided with a public defence lawyer or legal aid. Thus, most persons deprived of their liberty were without effective legal representation.

29. The SPT recommends that the State party prioritise the strengthening of the legal aid system, in order to ensure that it has the necessary human and financial resources to enable it to offer adequate legal defence to all persons deprived of their liberty effectively, with an urgent priority being given to those in pre-trial detention, and in particular children in pre-trial detention.

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[9] Including the United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169.

[10] Including the recommendations made by the United Nations Committee against Torture in CAT/C/UKR/CO/5, 2007, and the United Nations Working Group on Arbitrary Detention in A/HRC/10/21/Add.4, 2009.

[11] Including those made by the Council of Europe Commissioner for Human Rights in the report on his visit to Ukraine, CommDH(2007)15.

[12] Including the United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

4. Judiciary

30. Under Ukrainian law, if the investigating agency wants to keep a suspect in custody for more than 72 hours, it must bring him/her before a judge for a reasoned court decision within that 3-day period. Whilst interviews carried out by the SPT confirmed that the obligation to bring detainees before a judge within this timeframe was generally complied with, many complained that judges showed little interest in the circumstances of their arrest and tended to rubberstamp the request to extend their detention. According to information gathered, judges rarely asked questions about detainees' treatment during investigation.

31. In light of consistent allegations of torture and ill-treatment (see Chapter IV), judges should be vigilant for signs of torture and ill-treatment, and take legal steps to terminate and remedy such situations.

32. The SPT recommends that judges be obliged by law to ask every detainee about his/her treatment during investigation, to record in writing any allegations of torture or ill-treatment, and to order an immediate forensic medical examination[13] whenever there are grounds to believe that a detainee could have been subjected to torture or ill-treatment.

33. The continued prevalence of the use of confessions as the key element in judicial proceedings is concerning, despite national legislation providing that confessions constitute only a part of the evidence, and have to be verified and supported by other evidence.

34. The SPT strongly recommends the strengthened training of judges to avoid the over-reliance on confession evidence. Furthermore, judges should at all times refuse to accept confessions when there are reasonable grounds to believe that these have been obtained by means of torture or ill-treatment.

C. Fundamental safeguards

1. Safeguards applicable upon deprivation of liberty

(a) Information on the reasons for arrest and on the rights of detainees

35. Many persons interviewed indicated that they had not been properly informed of the reason for their detention at the time of arrest,[14] nor had they been informed of their rights.[15] Providing persons deprived of their liberty with information on the reason for their arrest and on their rights constitutes fundamental safeguards against arbitrary detention, and against torture and ill-treatment.

36. The SPT recommends that the State party ensure that instructions be given to detaining officers to safeguard the effective and systematic implementation of the right of each person deprived of liberty to be informed orally and in writing of the reason for his/her arrest and of his/her rights during detention, in a language that they can understand, at the outset of detention, and that this be recorded.

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[13] In accordance with the Istanbul Protocol, cf. subsection C.1.(v) below.

[14] International Covenant on Civil and Political Rights (ICCPR) article 9, paragraph 2.

[15] Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(b) Right to inform a third party of detention

37. The right of persons deprived of their liberty to inform a person of their choice about their detention represents a basic safeguard against torture and ill-treatment.[16] The SPT found several cases in which persons deprived of their liberty had not been able to inform a third person of their choice about their detention for prolonged periods of time, despite asking to do so.

38. The SPT recommends that persons deprived of their liberty be allowed to notify or to require the competent authority to notify a person of their choice of both the fact of their detention and of the place in which they are being held, free of charge. Such notification shall take place promptly after their initial detention or arrest and also after any transfer from one place of detention to another. Ideally, this notification shall be given by means of a phone call, and the date and time of this phone call, as well as the identity of the person notified, shall be noted in the register.

(c) Right to legal assistance

39. As a fundamental safeguard against torture and ill-treatment, detainees should have the right to independent legal assistance from the outset of detention,[17] and, in principle, an independent legal representative should be entitled to be present and assist the detainee during all police interviews and during appearances before a judge. If a detainee has been subjected to torture or ill-treatment, this access to defence will facilitate the right to complaint, in addition to performing a preventive function.[18]

40. As mentioned under the above section on public defence, a high proportion of the persons interviewed in Ukraine did not have access to legal assistance. Moreover, many persons interviewed informed the SPT that they had been coerced into signing declarations waiving this fundamental right.

41. The SPT recommends that the relevant Ukrainian authorities take immediate steps to cease and severely sanction the widespread practice of coercing persons into signing declarations waiving their right to legal assistance, as it is a clear example of an abuse of power. Any allegations of this practice should be thoroughly investigated and the responsible officers brought to account.

42. The SPT recommends that the authorities ensure that persons deprived of liberty are consistently informed of their right to have access to a lawyer of their choice, that they can be provided with legal aid services, and that they be able to freely exercise this right from the outset of their deprivation of liberty, and throughout the entire criminal justice procedure.[19]

(d) Length of police custody

43. Credible allegations were received concerning the practice of moving detainees between places of detention in order to avoid registration and in order to circumvent the legal maximum length of custody in those places. Such practices are a demonstration of bad faith in the execution of the authorities' legal obligations vis-à-vis the detainees, and could amount to arbitrary detention.

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[16] Committee against Torture, General comment No. 2, CAT/C/GC/2, para. 13; Principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[17] Committee against Torture, General comment No. 2, CAT/C/GC/2, para. 13.

[18] Principle 7 of the Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990 (Basic Principles on the Role of Lawyers).

[19] Principle 7 of the Basic Principles on the Role of Lawyers.

44. The SPT recommends that the maximum period of police custody in different categories of places as provided for by the law be strictly adhered to by officers, and that this be stringently monitored by the relevant authorities, including the courts.

(e) Medical examination

45. Through an analysis of medical registers at police facilities, as well as interviews conducted with detainees, the SPT observed that many detainees had a routine medical examination following arrest. Nevertheless, access to a health professional was not guaranteed and the SPT also received several serious allegations of persons not having been examined, or of urgently needed medical treatment being refused or delayed. The SPT observed that the registers contained scant, and often repetitive, information, indicating a superficial level of examination. Where injuries were recorded, the registers did not contain any assessment of how the injuries were sustained. Moreover, where injuries were noted and registered upon a detainee's arrival, there was no follow-up.

46. From a preventive standpoint, medical examinations and the proper recording of injuries incurred by persons deprived of their liberty constitute important safeguards for the prevention of torture and ill-treatment, and in combating impunity.[20] States must carry out a prompt and impartial investigation wherever there is a reasonable ground to believe that an act of torture or ill-treatment has been committed.[21] Such examinations should be carried out in private by a health professional trained in the description and reporting of injuries, include an independent and thorough medical and psychological examination, and the results be kept confidential from police or prison staff, and shared only with the detainee and/or the detainee's lawyer, in accordance with the Istanbul Protocol.[22]

47. The SPT recommends that the Ukrainian authorities ensure that all health professionals working with persons deprived of their liberty are given basic training in the description and assessment of injuries, and in how to report torture and to refer victims to expert examinations, based on the principles of the Istanbul Protocol. Moreover, the State party should establish an independent body of experts, including forensic specialist doctors and psychologists, empowered to investigate and document torture and ill-treatment in accordance with the Istanbul Protocol. Where injuries are noted and recorded, there should be appropriate follow-up.

48. The SPT recommends that a medical examination of each detainee record (a) the person's medical history, including any allegations of recent violence and the person's account of how any injuries were sustained, (b) the existence of any discomfort or symptoms, (c) the result of the clinical examination, including a description of any injuries and an indication as to whether the whole body was examined; and (d) the health professional's conclusion as to whether the three above elements are mutually consistent. If the health professional has grounds for supposing the existence of torture and ill-treatment, this should be registered in a national register of allegations of torture and ill-treatment, either with the consent of the examined person or, if this is refused, anonymously. In addition, with the consent of the detainee, the health professional should refer the detainee to an independent expert for a further examination in accordance with the Istanbul Protocol, in order to facilitate any subsequent disciplinary inquiry or criminal investigation. The confidential medical report should be given to the detainee and/or to the detainee's

[20] Committee against Torture, General Comment No. 2, CAT/C/GC/2, paragraph 13.

[21] UNCAT Article 12.

[22] The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the "Istanbul Protocol"), adopted in 1999.

lawyer. Finally, medical assistance should be guaranteed and accessible to all persons detained upon their request.[23]

2. Registers

49. Registers were generally well-maintained throughout the different types of institutions visited. However, the SPT noted some important cases of inaccuracies and omissions with regard to the registration of entry and exit of detainees or inmates. In addition, as mentioned in the preliminary observations, the SPT noted that there was a distinctive paucity in the number of entries of persons since the beginning of 2011 in the police stations visited. Finally, the SPT noted that the format for different types of registers throughout the country was similar but not identical, and that the registry system would benefit from modernisation.

50. The SPT reminds the State party that the maintenance of complete and reliable records of persons deprived of their liberty is one of the fundamental safeguards against torture or ill-treatment, and is an essential condition for the effective exercise of due process guarantees, such as the right to challenge the legality of detention (*habeas corpus*), and the right of the detainee to be brought before a judge promptly.

51. The SPT recommends that electronic registers be progressively established throughout the country, and that registers be harmonised. All persons deprived of their liberty should be promptly registered in a standardised and unified system.

52. The SPT recommends that registers at police and ITT facilities record for each detainee information concerning: (1) exact date and time of apprehension; (2) exact time of arrival at the facility; (3) reasons for the arrest; (4) authority ordering the arrest; (5) identity of the arresting officer/s; (6) date, time and reasons for transfer/s or release; (7) precise information about where the person was held during the whole period of detention (e.g. cell number); (8) date, time and identity of the person notified of the detention, including the signature of the officer who proceeded to this notification; (9) date and time of a family visit; (10) date and time of request and/or meeting with a lawyer; (11) date and time of request and/or visit of a health professional; and (12) date and time of the detained person's first appearance before a judicial or other authority.[24] **If necessary, this information should be made available to the detainee's lawyer.**[25] **Police officers should be properly trained in the maintenance of registers, and should enter the information upon arrival of the detainee. The SPT also recommends that the inventory of personal belongings, including money, be registered, signed by both officer and detainee at the time of arrival, and again when the personal belongings are handed back to the detainee or his/her representative on leaving the police facility.**

3. Complaints mechanisms

53. Persons deprived of their liberty were only vaguely aware of the possibility of submitting a complaint, and would generally not complain either because they did not believe it would lead to any positive or useful outcome, or that it would lead to reprisals

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[23] Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and article 6 of the Code of Conduct for Law Enforcement Officials. General Assembly resolution 34/169.

[24] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 12.

[25] See Principles 12 and 26 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

against them. The SPT also received allegations regarding the tampering or non-transmission of correspondence.

54. A human rights approach requires that persons deprived of their liberty are understood to have legal rights, and be empowered not only to lodge complaints, but also to have access to the means and channels necessary to pursue and achieve justice. One of the basic safeguards against torture and ill-treatment is the right of a detainee or their legal counsel to lodge a formal complaint regarding their treatment.[26] The mere existence of complaints mechanisms is not enough; they must be, and must be seen to be, independent, impartial and effective.

55. In this regard, the SPT recommends:

(a) That all persons deprived of their liberty be informed (for instance, through leaflets and posters) about their right to submit direct and confidential complaints, i.e. without filtering by police or prison staff and/or other detainees, to the authority responsible for the administration of the place of detention, to higher authorities and to authorities with remedial powers;

(b) That the right to submit complaints be guaranteed in practice, and that complaints be received uncensored as to substance and be considered and replied to without undue delay;

(c) That no reprisals or other forms of prejudice be suffered by those making a complaint;

(d) That the relevant authorities establish and maintain a register of all complaints received, including their nature, the institution where it originated, date of receipt, date of decisions, the nature of the decision and any action taken as a result;

(e) That the State party establish a national register of all allegations of torture and ill-treatment.

4. Visiting bodies and oversight mechanisms

56. The SPT regrets the dissolution of the department for human rights monitoring of the Ministry of Internal Affairs, and the so-called mobile monitoring groups that previously conducted monitoring of police facilities and ITTs. The SPT took note of the mandate of the Parliamentary Commissioner for Human Rights to conduct monitoring of places of deprivation of liberty, but noted that this institution did not have the capacity to adequately cover the entire country.

57. Institutional oversight mechanisms are important in the prevention of torture and ill-treatment. Oversight mechanisms should conduct regular and unannounced visits and have the possibility to interview inmates and detainees in private, and to oversee and discuss the management and administration of institutions and facilities with staff.

58. The SPT recommends that Ukraine increase the level of institutional oversight, both independent and internal, by the relevant bodies and authorities, in order to ensure that the central State authorities are fully aware of issues and problems within institutions and facilities throughout the country.[27] In addition, the SPT reiterates its call on the State party to accept a prompt advisory visit, which would seek to make

[26] Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173; Rules 35 and 36 of the Standard Minimum Rules for the Treatment of Prisoners.

[27] European Prison Rules, Rule 9.

recommendations and observations with a view to strengthening the capacity and the mandate of the designated NPM. The SPT also encourages the Ukraine to support and promote the activities of NGOs, which can provide additional means of oversight.

D. Pre-trial detention

59. The SPT was gravely concerned to find cases of persons being held for up to nine years of pre-trial detention. Such long periods of pre-trial detention could not be satisfactorily justified, and were exacerbated by the conditions of detention in which pre-trial detainees were being held (as further developed in Chapter IV). Moreover, pre-trial detention was applied as the norm, rather than the exception. Alternative measures to pre-trial detention, such as bail, house arrest, social services, *inter alia*, were very limited in both theory and practice.

60. The SPT recommends the State party to take the necessary legislative and practical steps, including the training of judges, to increase the use of non-custodial alternative measures to pre-trial detention, with due regard to international and regional standards.[28] The length of pre-trial detention shall be strictly monitored by the relevant authorities. Pre-trial detention should be a last resort in criminal proceedings, should only be used for limited periods of time, and as determined by law, with due regard to the investigation of the alleged offence, and to the protection of society and the victim. Persons held in pre-trial detention should be presumed innocent.[29]

E. Juvenile justice

1. Systemic issues

61. The SPT is concerned at the slow pace of reforming the juvenile justice system in Ukraine. In the absence of a specialized juvenile justice system, children[30] in conflict with the law were tried by ordinary courts. While the right of children to free legal assistance was recognised by law, the quality of the free legal services provided to children was reportedly very poor.

(a) Legislation in need of amendments

62. Ukrainian legislation contained provisions allowing joint adult/child confinement for "safety reasons", and permitted children to be held in solitary confinement for up to five days as a disciplinary measure. Joint adult/child confinement is contrary to the principle of separation of children from adult prisoners.[31]

63. The SPT considers the maximum sentence of 10 years that can be imposed for offences not involving murder committed by persons under age 18, under current national legislation, to be excessive.

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[28] Including the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), adopted by General Assembly resolution 45/110, Rule 6.1.

[29] International Covenant on Civil and Political Rights, article 14, paragraph 2.

[30] In accordance with article 1 of the Convention on the Rights of the Child (CRC), children are all human beings below the age of eighteen years, unless if under the law, majority is attained earlier.

[31] ICCPR, article 10, para 2 ; CRC, article 37; Beijing Rules, rules 13.4 and 26.3; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 29.

(b) Police custody

64. National legislation referring to children in conflict with the law generally complied with international standards of due process. However, some guarantees were insufficiently respected in practice, in particular that a lawyer or other appropriate assistance be present when a child is interviewed by the police. The SPT received consistent allegations of beatings as well as the use of threats and intimidation during interrogation of children in conflict with the law.

(c) Pre-trial detention

65. Pre-trial detention of children for six months to one year was common in Ukraine, and the SPT found cases of children being held in pre-trial detention for up to two years. The length of pre-trial detention of children, combined with poor living conditions, restrictions on family visits, and the obligation to stay in cells for long hours, could be considered to amount to ill-treatment.

66. The SPT recommends, to ensure the full implementation of instruments of juvenile justice in accordance with international standards,[32] and bearing in mind the best interests of the child, that:

(a) Efforts be intensified to develop and enact, as a matter of priority, a comprehensive juvenile justice system;[33]

(b) Efforts be made to establish, where possible, mechanisms for dealing with children in conflict with the law, without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected;[34]

(c) Children and adolescents only be deprived of their liberty as a measure of last resort, for the shortest possible period of time, subject to regular review;

(d) Alternatives to the deprivation of liberty be further developed, wherever possible;

(e) Priority be given to reducing the number of children detained prior to trial and while awaiting sentencing or appeal, and to reducing the duration of detention when there are compelling reasons for the child to be deprived of liberty;[35]

(f) National legislation allowing joint adult/child confinement, as well as solitary confinement of minors be urgently amended;

(g) Length of sentences applied to children, without precluding the possibility of early release, be reduced;

(h) Children receive proper legal defence at all stages of legal proceedings, including during police interviews.[36]

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[32] Articles 37(b), 39 and 40 of the Convention on the Rights of the Child; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

[33] In accordance with General Comment No. 10 of the Committee on the Rights of the Child (CRC), on the rights of the child in juvenile justice.

[34] Convention on the Rights of the Child, article 40, paragraph 3(b).

[35] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17.

[36] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), GA resolution 40/33, paragraph 7.1.

2. Issues arising from visits to specialized facilities

(a) Reception-distribution centres

67. Reception-distribution centres were used for both children in conflict with the law, and children in situations of neglect between 3 and 18 years of age, without any procedural discrimination between these categories. The SPT recommends that children in conflict with the law be kept separately from other categories of children in these centres.

(b) Schools of social rehabilitation

68. At the time of the SPT visit, the Ministry of Education was operating a network of eleven schools of social rehabilitation for the deprivation of liberty by court order of children aged 11-14 years, who had committed a "socially dangerous act". Since the age of criminal responsibility is 14 years, the deprivation of liberty in such schools is concerning. Private interviews with children revealed that relatively minor offences, such as a petty theft, were penalized with placement in these institutions.

69. In the absence of other social structures, children who had not committed any offence, but who presented "antisocial behaviour", or came from situations of homelessness or parental neglect, were also admitted to these schools, without a court order. The children were not separated by categories.

70. The SPT was favourably impressed by the School for Social Rehabilitation in Lviv, and the services provided to the children there free of charge. However, the SPT was concerned by the generally ineffective use of facilities, evident in the ratio of staff to children and empty installations.

71. Since no other resources currently exist to respond to situations of child neglect and for the prevention of delinquency, the SPT considers that these institutions should be maintained, but that the institutional framework for the schools should undergo a change in approach from punitive to preventive,[37] in order to prevent further stigmatization and criminalization of the children. The existing infrastructure and human resources should be rationalized.

(c) Correctional colonies for juveniles: Sambirska colony

72. Although children interviewed by the SPT expressed their positive attitude towards the Sambirska prison colony, they were not aware of any complaint mechanisms. Furthermore, the SPT considered the visiting regime, currently established at once monthly, to be insufficient. Finally, children held in the colony had a reduced choice of vocational training.

73. In light of the above, the SPT recommends that the State party:

(a) Conduct information campaigns for children in conflict with the law on their rights, and ensure that material on complaint and appeal mechanisms be included in the training curricula of prison colonies' staff;

(b) Authorize regular and frequent visits of children by their relatives, in principle a minimum of once a week;[38]

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[37] In accordance with the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

[38] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rules 59 and 60.

(c) Expand the available vocational training provided to children held in prison colonies.[39]

F. Healthcare

74. The SPT examined the overall provision of healthcare in places of deprivation of liberty, and welcomes the fact that health professionals were available at all the pre-trial and penitentiary institutions visited.

75. The SPT was greatly concerned that the setting and format for medical examinations and healthcare in several of the institutions visited were inappropriate as regards medical confidentiality.

76. The SPT recommends that when an examination is taking place any guards should be out of sight and hearing. Medical examinations and consultations should not take place through bars, or with the patient in handcuffs. Any special security measures should be determined on a case by case basis, in accordance with international standards,[40] and the reasons recorded in the detainee's medical file.

77. The SPT observed that extremely restrictive security measures were employed when transferring inmates or detainees to external healthcare facilities, especially those subject to life sentences. Additionally, the vehicles used were not adequate for transporting sick people. Procedures for the transfer of patients in need of urgent specialised treatment were extremely lengthy, potentially jeopardizing the health of the person concerned.

78. The SPT recommends that security policies for transfers of persons to external healthcare facilities be reviewed countrywide. Extensive security measures should only be applied in exceptional circumstances,[41] and security measures should be decided on a case by case basis, and the reasons be recorded in the patient's medical file. The administrative procedures for transfers should also be reviewed urgently with a view to shortening the transfer of patients in practice.

79. Medical registers in the different categories of places visited raised concerns regarding coherence and completeness. For example, some recorded the existence of traumas without providing any information regarding their origin.

80. The SPT recommends that the medical records system be updated and that efforts be made to establish a more coherent and complete form of recording information. The SPT reiterates its recommendation that all health professionals working with persons deprived of their liberty be given basic training in description and assessment of injuries and how to manage such situations, and that an independent expert body be established in accordance with the Istanbul Protocol.

81. The SPT frequently received allegations that inmates or detainees were obliged to pay for treatment and medicines, which in many cases they could not do. It believes that it is the responsibility of the State party to provide for the adequate healthcare of all persons deprived of their liberty free of charge.[42]

82. The SPT recommends that the State party urgently conduct a country-wide audit of the needs in all institutions, in order to facilitate the provision of sufficient medical supplies.

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[39] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 43.

[40] European Prison Rules, Rule 51.

[41] European Prison Rules, Rule 53.

[42] European Prison Rules, Rule 39.

83. The SPT further recommends that the Ukrainian authorities conduct a country-wide audit of the healthcare needs in places of deprivation of liberty, in order to urgently remedy both basic and specialised areas requiring attention. For example, the availability in institutions of dental care, mental and psychiatric healthcare and gynaecological services free of charge needs to be significantly increased.

84. The SPT came into contact with persons deprived of their liberty who were suffering from substance abuse, but noted a lack of specific treatment both for those suffering from such abuse or from withdrawal symptoms.

85. The SPT recommends that, in addition to ensuring that a routine medical examination be conducted upon admission to a place of detention, health professionals be available in places of detention to monitor and treat serious withdrawal symptoms, and any other consequences of substance abuse.[43]

86. The SPT noted that persons were screened for tuberculosis upon admission to institutions and that efforts were made to separate persons with tuberculosis from other detainees, and to provide treatment. Nevertheless, there were marked differences between institutions regarding both the conditions of detention of, and the treatment available to, those with tuberculosis.

87. The SPT recommends that steps be taken to harmonize and improve the conditions of detention and treatment provided to persons with tuberculosis.

88. The SPT was informed that the prevalence of HIV among inmates and detainees was unknown and that very few persons were willing to take an HIV test. A large proportion of deaths in custody were reportedly related to the combination of HIV and hepatitis B.

89. The SPT recommends that the Ukrainian authorities more proactively develop health promotion initiatives, inter alia on prevention of transmissible diseases, notably HIV, for instance through peer-based education. Recalling international guidelines on HIV/AIDS and human rights,[44] **the SPT recommends that in-prison voluntary and confidential testing be provided by trained medical staff, that pre- and post-testing counselling be provided, and that medical treatment be provided to inmates who test HIV positive, at least at an equivalent level to that in the general community.**

IV. Situation of persons deprived of their liberty

A. Police stations and temporary holding facilities (ITTs)

1. Conditions of detention

90. Although there were some differences in the conditions of detention found in the various police stations visited, the SPT noted that persons were detained in conditions which were generally poor as regards space, hygiene, toilet facilities, natural light and ventilation. Limiters used to restrict the opening of doors in both ITTs and police stations were dangerous and could result in injury.

91. The material conditions in most of the temporary holding facilities (ITTs) visited were found to be considerably better, although the SPT did observe a lack of hygiene, natural light and ventilation in some places. Persons interviewed in ITTs indicated that they

[43] European Prison Rules, Rule 42.3(d).

[44] International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version, Guideline 4, jointly published by the Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS.

had access to one hour exercise per day in the yards, and that they were provided with 3 meals per day and drinking water.

92. The SPT recommends that the Ukrainian authorities conduct an independent audit of the material conditions of detention in police stations and ITTs nation-wide, with the aim to improve conditions where needed, bringing them in line with international standards, and create facilities in police stations where detainees spending more than 24 hours can have a minimum of one hour of exercise daily. The SPT further recommends the removal of door limiters.

2. Torture and ill-treatment

93. The SPT was alarmed to receive numerous and consistent allegations of torture and ill-treatment during police detention in Ukraine, especially during initial interrogation. This information was substantiated by the interviews conducted with detainees and inmates throughout the country, which provided evidence of the practice of subjecting persons deprived of their liberty to beatings during the initial period of arrest and interrogation by the police and, for those under lengthy investigation, during the periods of detention in ITTs as well. The methods included kicks and blows, using the fists, feet, bags of sand, and bottles of water. Furthermore, several persons stated that they had been subjected to asphyxiation and electric shocks to the ears and genitals.

94. The SPT also received allegations of persons who had been taken into arrest by the police with wounds or other health concerns, and had been denied medical assistance for prolonged periods of time, despite their requests.

95. Many interviewees indicated that psychological pressure had been used during the initial interrogation, including threats to themselves or their families. As mentioned earlier, persons interviewed indicated that they had been forced to sign confessions and to waive their right to legal representation.

96. The SPT considers the above allegations to be clear examples of physical and mental torture and ill-treatment. In light of the consistency of the allegations received, the SPT considers that there is a severe problem of systematic use of torture and ill-treatment by the police in Ukraine. The SPT categorically condemns all acts of torture and ill-treatment and recalls that torture cannot be justified under any circumstance, and must be completely prohibited in accordance with international human rights law.[45] The SPT reiterates its call for the Ukrainian authorities to condemn and criminalize any act of torture firmly and publicly, and to take the necessary steps to prevent torture and ill-treatment. The SPT reminds Ukraine of, and reinforces, CPT recommendations that a clear message of "zero-tolerance" of torture and other forms of ill-treatment should be delivered at the highest level and at regular intervals to all Internal Affairs staff, and should be relayed through professional training.[46] In addition to those measures previously recommended in the preliminary observations and elsewhere in this report, preventive steps include *inter alia* the conduct of prompt, impartial and independent investigations, the establishment of an efficient complaints system, and the prosecution and punishment of alleged perpetrators.

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[45] Including article 7 of the Convention; the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights, ECHR), article 3; and Rule 31 of the Standard Minimum Rules.

[46] See CPT/INF (2007), paras 20 and 21.

B. Pre-trial detention facilities (SIZOs)

1. Conditions of detention

(a) Overcrowding

97. The SPT observed high levels of overcrowding in many SIZO cells, posing serious health and hygiene concerns. For example, in one SIZO, 34 people were being held in a cell measuring 6.5 x 5 metres, with only 26 beds available. At the same time some detainees were held in superior cells with much better material conditions and less overcrowding, for which no satisfactory explanation could be given.

98. The SPT reiterates its recommendations made under Section III.D above that the use and length of pre-trial detention in Ukraine be reduced, and in addition recommends that the State party take urgent steps to reduce overcrowding in the SIZOs. A sufficient number of beds should be provided in accordance with international standards.[47] Differences of treatment are only acceptable if based on formal objective criteria, and should be recorded in a transparent manner in the registers.

(b) Material conditions

99. The SPT considers the general material conditions of the SIZOs to be inadequate as regards minimum floor space per detainee, lighting, heating and ventilation.[48] The general levels of hygiene, access to clean water, and the conditions of toilet facilities (including the lack of privacy when using the toilet) in the SIZOs gave rise to equal concern.

100. Interviewees further indicated that they were not provided with toiletries necessary for personal health and cleanliness and had to rely on their families or the charity of other detainees for such essentials, and that a weekly shower was not guaranteed.

101. The SPT recommends that the State party prioritize the improvement of general hygiene, access to water and sanitation, and access to personal hygiene articles in SIZOs, in accordance with international standards.[49]

102. In addition, the Ukrainian authorities should conduct a nation-wide audit into the material conditions of SIZOs, with the aim of planning other progressive material improvements, in particular with regard to minimum floor space, lighting, heating and ventilation.

(c) Regime and activities

103. The SPT was concerned by the very strict regime in SIZOs, especially in light of the length of pre-trial detention. Although all detainees were meant to have one hour daily exercise outside of their cells, the SPT heard from many detainees that this was not always so. In addition, the exercise yards were often small, dilapidated and bare. Some, but not all, were equipped with rudimentary exercise bars or benches. Many were covered in such a way that there was no view of the sky, yet somehow contrived to let in the elements. The SPT was equally concerned by the general lack of meaningful activities for detainees held in SIZOs.

104. The SPT recommends that the Ukrainian authorities ensure that the SIZOs respect the right of all detainees to have to a minimum of one hour daily exercise.[50]

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[47] Standard Minimum Rules, Rule 19; and European Prison Rules, Rule 21.

[48] Standard Minimum Rules, Rules 10 and 11.

[49] Standard Minimum Rules, Rules 12 and 13.

[50] Standard Minimum Rules, Rule 21.

The lack of meaningful activities like work, training and education should be remedied, and sports activities made possible.

(d) Contact with the outside world

105. The SPT understands that in accordance with national legislation, persons under investigation could not receive visits from family members unless these were approved by the investigator or court to which their case was assigned. As a result, the majority of persons detained in SIZOs, who are often held in pre-trial detention for lengthy periods of time, did not receive visits (or were compelled to designate family members as their civil advocates). The SPT is concerned by such a strict regime for visits, and notes that the method of approving visits may lead to an abuse of power.

106. The SPT recommends that the rules be revised in order to allow regular family visits to all persons held in pre-trial detention, in accordance with international standards.[51] Decisions to restrict family visits should be justified on the basis of transparent criteria, limited in time and subject to regular review.

(e) Discipline and sanction

107. The conditions of the disciplinary cells in all SIZOs visited were inhumane. They were bare, small, very dark, poorly ventilated, and humid, with appalling hygiene and completely inadequate toilet facilities and bedding. In addition, the regime for persons held in SIZOs subject to life sentences was essentially the same as being kept in the disciplinary cells for the entire duration of the detention.

108. The SPT considers that such disciplinary detention amounts to ill-treatment, and could in some circumstances be used in a fashion which amounts to a form of torture. The conditions of detention and regime in the disciplinary cells in SIZOs should be revised as a matter of priority, with a view to making conditions of detention during disciplinary measures more humane, and in line with international standards.[52] Furthermore, persons appealing life sentences and being held in SIZOs during that time should not be kept in conditions equivalent to a permanent disciplinary regime.

2. Torture and ill-treatment

109. The SPT considers that the situations of concern outlined in the preceding section ("Conditions of detention") may amount to the ill-treatment of persons detained for prolonged periods of time in the SIZOs, and could in some circumstances amount to a form of torture.

110. The SPT therefore recommends that the State party take urgent steps to remedy the situations of concern described above, in order to fulfil its international human rights obligations regarding the prevention of torture and ill-treatment.

[51] European Prison Rules, Rule 99.

[52] Standard Minimum Rules, Rule 31.

C. Prison colonies

1. Conditions of detention

(a) Overcrowding

111. The SPT observed overcrowding in some of the prison colonies visited. For instance, at the time of the visit, there were 1,280 inmates in Luchakivski Prison No. 30, although the institution had a capacity for only 1,100 inmates. As a result, some of the inmates had to share beds or take turns to sleep.

112. The SPT recommends that proper beds and sufficient personal space be made available to all inmates.[53] Overcrowding in prison colonies should be reduced, and a national plan of action should be devised to this end.

(b) Material conditions

113. The SPT considered material conditions of the prisons inadequate as regards minimum floor space, water, lighting, heating and ventilation. Prison administrators informed the SPT that their level of official funding did not fully cover their approved budgets and they were expected to make up for the shortfall by engaging in production and seeking humanitarian assistance.

114. The quality of the drinking water in the prisons was deplorable, and inmates reported stomach problems as a result of drinking it. In all the prisons visited, the toilet facilities were in an appalling state. Bathing facilities were substandard and unhygienic, and inmates complained that they had not showered for several weeks. Personal hygiene items were not provided in all the prisons visited and inmates who could not receive such items from outside the prison had to rely on the charity of others. In all prisons, the SPT received complaints from inmates about the quality of the food.

115. The SPT also observed excessive humidity in a significant number of cells, and inadequate heating, ventilation and lighting in all prisons visited, with a lack of appropriate control over these factors by the inmates themselves.

116. Disciplinary and solitary confinement cells in all the prisons visited suffered from particularly poor material conditions and poor hygiene, as regards the quality or absence of drinking water, the poor state of sanitary facilities, as well as inadequate lighting and ventilation, and a lack of activities.

117. The SPT recommends that the State Penitentiary Service of Ukraine and other relevant authorities develop a plan of action on the improvement of material conditions in prison colonies with a realistic timeframe for its implementation. Adequate budget resources should be allocated for the realisation of this plan so as to ensure that the basic needs of all persons deprived of their liberty are met. The SPT also recommends that Ukraine cease the practice of under-funding penitentiary establishments and provide the full funding required to run them, irrespective of whether additional funding might be secured through other channels. In particular, the following should be addressed:

(a) Ventilation, cubic content of air, minimum floor space, lighting and access to natural light, and adequate heating in cells and dormitories should be guaranteed in accordance with international standards;[54]

[53] Standard Minimum Rules, Rule 19.

[54] Standard Minimum Rules, Rules 10 and 11.

(b) Prisons should have adequate and hygienic shower/bathing and toilet facilities in a proper state of repair, sufficient for personal hygiene, washing of clothes and waste disposal;

(c) Food should be nutritious, effectively distributed to all inmates and prepared and served in a proper and decent manner;

(d) Clean drinking water should be provided to every prisoner whenever s/he needs it.

(c) Work, cultural and educational activities

118. The SPT noted that there were opportunities for work in all the prisons visited. However, although work opportunities existed, the number of jobs was not commensurate to the size of the prison population. Low wages, when combined with the systematic practice of deducting costs of food and utilities, meant that prisoners were working without any meaningful remuneration at all, and often acquired debts to the state. The only incentive to work was the possibility to be released on parole.

119. The SPT was pleased to learn that secondary, vocational and, sometimes, even higher educational opportunities existed in all the prisons visited. Cultural, educational and recreational activities were also available in some of the prisons visited. Sports facilities in all the prisons visited were inadequate.

120. The SPT recommends that all prisoners without exception be given access to work, educational and cultural activities, and that a library with a sufficient number of newspapers, educational and recreational books, and expanded opportunities for sports activities be made available in all prisons. The SPT further recommends that the systematic practice of deducting costs of food and utilities from monies and payments received by prisoners should be suspended. Instead, a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the inmate on his/her release.

(d) Contact with the outside world

121. Inmates were generally able to receive visits. A 3-day visit with overnight stays was allowed once in three months. Short-term visits (up to 4 hours) without overnight stay were permitted on a monthly basis. The SPT found that the facilities for visits were adequate and ensured privacy during visits by family members. The SPT noted, however, the high cost of overnight visits, which would have a discriminatory effect against those inmates who cannot afford it.

122. The SPT recommends that spouses and children staying overnight should only be charged in relation to any costs actually incurred (e.g. food).

(e) Discipline and sanction

123. Disciplinary measures appeared to be applied arbitrarily or inconsistently. Several inmates told the SPT that in some cases a warning was issued while in other cases a similar offence resulted in the placement in a disciplinary cell. A register detailing an offence and sanction was maintained in all prisons visited, containing satisfactory information on each inmate's punishments and recognitions.

124. A sample of personal files checked by the SPT confirmed that inmates were generally informed of the offence alleged against them and given an opportunity to present their defence. Inmates interviewed by the SPT reported however that while they signed a paper advising them of their rights, they were never provided with information on the procedure and the modalities of appeal against disciplinary measures and none of them considered doing so. The overall attitude was one of resignation and fear of reprisals.

125. The SPT recommends that the State party take practical steps to guarantee the right of inmates to submit petitions or appeals regarding their treatment, including disciplinary measures, without fear of reprisals, to an independent authority with appropriate remedial powers, as a basic safeguard against torture and ill-treatment.

126. The SPT noted with serious concern that in some prison colonies a "cage" – a small cell with bars – was allegedly used as a punishment cell. This space was not equipped with sanitary facilities and several inmates stated that they were exposed to cold temperatures there. Such placement was not recorded nor authorized by the rules, and prison staff denied the existence of such a facility.

127. The SPT considers that the punishment of inmates by their placement in "cage" cells amount to ill-treatment. This practice should cease immediately, be subject to investigation and the responsible officers held accountable.

2. Torture and ill-treatment

(a) Situation of persons serving a life sentence

128. Conditions observed by the SPT in the sectors for prisoners serving life sentences in Yenakievo prison No. 52 and Sokal prison No. 47 amounted to ill-treatment. The SPT noted the absence or poor quality of water, the poor state of sanitary facilities, inadequate lighting and ventilation, and unavailability of personal hygiene items.

129. The right to take part in meaningful cultural, sports or educational activities were granted only after serving 15 years. Some interviewees complained that they spent less than an hour daily out of their cells and that, sometimes, they could only walk handcuffed.

130. The SPT observed with concern that retired and disabled inmates serving life sentence were de facto deprived of work opportunities, and since they also did not receive payment of pensions during the whole period of their sentence, they were often impoverished.

131. Security and visiting regimes applied to persons serving a life sentence were much stricter than those applied to other prisoners, and were in general equivalent to a permanent disciplinary regime. There was an automatic assumption on the part of prison staff that all life prisoners were extremely dangerous. Consequently, security measures were exceedingly restrictive, even for the elderly and frail. Persons serving a life sentence were entitled to a four-hour long visit only once every 3 months. These visits took place under the close supervision of prison staff and did not allow for any privacy.

132. The SPT considers that the conditions of detention and prison regime applied to persons serving a life sentence constitute ill-treatment. In accordance with international standards,[55] the SPT calls upon the State party to take all necessary steps to:

(a) Improve material conditions for life prisoners, including running water, provisions of drinking water, toilets and sanitary conditions;

(b) Remedy the lack of activities for life prisoners, including sports and income-generating activities;

(c) Ensure that inmates are treated on an equal basis and without discrimination, including that visiting rules for persons serving a life sentence be harmonized with those applicable to other groups of inmates;

[55] Including the Standard Minimum Rules, the United Nations Recommendations on Life Imprisonment, and the European Prison Rules.

(d) Ensure that prison staff, in accordance with clear and recorded criteria, undertake individual assessments of security measures applicable to life-sentenced prisoners to determine whether they require restrictive regimes or can function in an ordinary prison environment, in accordance with international standards.[56]

133. The SPT also received serious allegations from persons serving a life sentence of torture and ill-treatment. These allegations included systematic beatings, blindfolding, the deliberate non-separation of inmates from persons with active tuberculosis, and the denial of medical assistance.

134. The SPT urges the Ukrainian authorities to proceed to prompt, independent and impartial investigations regarding allegations of torture in penitentiaries holding life prisoners, in accordance with its obligations under UNCAT article 12, and, if these accusations are confirmed, to hold the responsible persons accountable.

(b) Situation in women's prison No. 127

135. The SPT visited one specialised facility for female prisoners; prison No. 127 in Snizhne. The work regime, disciplinary measures and material conditions imposed on the women in this prison were of grave concern. The SPT was not in a position to ascertain whether similar violations of female prisoners' rights occur across the country in a systematic manner, therefore, the findings and recommendations contained in the present section refer only to the prison in Snizhne.

136. This notwithstanding, the SPT urges the penitentiary authorities to urgently carry out an inquiry to ensure that the violations outlined in the following are not perpetrated in a systematic manner across Ukraine.

137. The SPT observed a high level of exhaustion among the women as a result of their being required to undertake long hours of mandatory physical work, often reaching 12 hours per day, in addition to two hours of daily chores. The women had allegedly carried 60 tonnes of coal in two days without any protective gear, and carried 50 kg bags of flour and construction materials on a regular basis. Concerns were raised regarding safety hazards related to the work. Payments for work, if received at all, were small. Moreover, because of the monthly deductions from salaries for food and utilities, some prisoners allegedly accumulated debts, which would be charged after their release. The work regime in this prison represents a clear example of exploitation and forced labour, amounting to ill-treatment, and requires urgent remedial action from the authorities.

138. Disciplinary measures in the prison were applied in an arbitrary fashion, without the possibility of appeal, and were also applied to elderly women and those who refused to work. The isolation cells were in a particularly bad state of repair and had no toilets.

139. Toilets within the sleeping accommodations were inaccessible during the day. The outside sanitary facilities that women were required to use during the day were in an appalling state, resulting in an accumulation of faeces and urine. Allegedly, the authorities forced certain persons (who complained or refused to work) to clean these. Gloves and masks were not provided, and the prisoners had to clean with their bare hands. The SPT considers that being forced to perform such tasks, especially with the purpose of punishment, amounts to unacceptable ill-treatment.

140. Communication with the outside world, especially with families, was restricted, and the prison administration allegedly decided who would receive visits, depending on their "behaviour". In case the inmate refused to work, family visits and phone calls were suspended. In addition, in the case of female prisoners, long visits by a civil partner were

[56] European Prison Rules, Rules 51 and 53.

prohibited and prices for use of facilities for intimate visits were prohibitive and higher than in the male colonies visited by the SPT.

141. The SPT requests the State party to urgently address the situation of forced labour and exploitation at prison No. 127 in Snizhne and to hold accountable those responsible. Furthermore, the SPT recommends that:

(a) Material conditions in that prison immediately be improved, especially with regard to toilets, disciplinary cells and work facilities;

(b) Detainees be provided with adequate time of rest and that use of heavy physical labour and/or degrading work as a disciplinary measure cease immediately;

(c) The right of persons to communicate with the outside world, in particular family members, be respected in practice. In accordance with international standards, women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means.[57] Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men, without discrimination on any grounds.[58]

V. Repercussions of the visit

142. The SPT observed a hostile attitude and tense atmosphere during its visits to institutions. Many detainees and inmates refused to be interviewed in private, possibly out of fear of reprisals. Some inmates indicated that they had been "warned" about the visit. The SPT is therefore seriously concerned about the possibility of reprisals against interviewees. The SPT underlines that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of Ukraine's obligation to cooperate with the work of the SPT under the Optional Protocol.

143. In accordance with article 15 of OPCAT, the SPT calls upon the relevant Ukrainian authorities to ensure that there are no reprisals following the SPT visit. The SPT requests the State party to provide detailed information in its follow-up response on what it has done to prevent the possibility of reprisals against anyone who was visited by, met with or provided information to the SPT during the course of its visit.

[57] United Nations Rules for the Treatment of Women Prisoners (the Bangkok Rules), Rule 26.
[58] Bangkok Rules, Rule 27.

Annexes

Annex I

[English only]

List of persons with whom the SPT met

I. National authorities

A. Ministry of Justice

Valeriya Lutkovska, Government Agent before the European Court of Human Rights

Nazar Kulchitsky, Head of Secretariat of the Government Agent before the European Court of Human Rights

Tamara Andrieva, Deputy Director of the Department of International Cooperation and Law

Svitlana Kolyshko, Head of the Unit on cooperation with international organizations

Roman Iemets, specialist of the Unit on cooperation with international organizations

B. Office of the General Public Prosecutor

Oleksiy Lilyakov, Head of Unit

C. State Security Service

Igor Demchenko, Head of Unit

Ministry of Internal Affairs

Makar Barylo, Head of Unit

Yuriy Mazur, Deputy Head of the Directorate

Oleksandr Humenyuk, Chief Inspector

D. Ministry of Defence

Igor Strokan, Head of Unit

Oleg Lavrov, Chief of Staff

State Border Guard Service

Oleksandr Skihin, Deputy Head of the Directorate

Serhiy Abalmasov, Deputy Head of the Directorate

E. Ministry of Education, Science, Youth and Sports

Vira Shynkarenko, Head of Unit

F. Ministry of Health

Yuri Polishchuk, Chief Specialist

G. Ministry of Social Policy

Iryna Kysliak, Deputy Director of Department

State Penitentiary Service

Sergiy Sydorenko, First Deputy Chairman

Oleksandr Kislov, Director of Department

Vladislav Klysha, Head of Unit

II. Parliament Commissioner for Human Rights

Nina Karpachova, Ombudsperson

III. United Nations Development Programme

Olivier Adam, Resident Coordinator

IV. Civil society

American Bar Association, Rule of Law Initiative

Association of Ukrainian Monitors on Human Rights Observance in Law-Enforcement Activities

Chernihiv Public Committee for Human Rights Protection

Danish Refugee Council

Donetsky Memorial

Kharkiv Human Rights Group and the Helsinki Human Rights Union

Kharkiv Public Centre "Youth for Democracy"

International Renaissance Foundation

Annex II

[English only]

Places of deprivation of liberty visited

I. Prison colonies

1. Buchanska Prison Colony No. 85, Kyiv Region
2. Luchakivski Prison Colony No. 30, City of Lviv
3. Snizhne Prison Colony for Women No. 127, Donetsk Region
4. Sokal Prison Colony No. 47, Lviv Region
5. Yenakiyeve Prison Colony No. 52, Donetsk Region
6. Zhdanivka Prison Colony No. 3, Donetsk Region

II. Police stations

1. Halitski District Police Station, City of Lviv
2. Kalininski District Police Station, City of Donetsk
3. Khartsizsk City Police Station, Donetsk Region
4. Kyivski District Police Station, City of Donetsk
5. Shevchenkovski District Police Station, City of Lviv
6. Sykhivski District Police Station, City of Lviv
7. Transport Police Department at Kyiv-Pasazhyrski Train Station
8. Yenakiyeve City Police Station, Donetsk Region
9. Zaliznychnyi District Police Station, City of Lviv

III. Police temporary holding facilities (ITTs)

1. Donetsk Temporary Holding Facility, City of Donetsk
2. Horodok Temporary Holding Facility, Lviv Region
3. Khartsizsk Temporary Holding Facility, Donetsk Region
4. Lviv Temporary Holding Facility, City of Lviv
5. Uzhhorod Temporary Holding Facility, City of Uzhhorod
6. Yavoriv Temporary Holding Facility, Lviv Region

IV. Pre-trial detention facilities (SIZOs)

1. Artemivsk Pre-trial Detention Centre, Donetsk Region
2. Kyiv Pre-trial Detention Centre, City of Kyiv
3. Lviv Pre-trial Detention Centre, City of Lviv

V. Facilities for children

1. Kyiv Reception-Distribution Centre for Children, City of Kyiv
2. Sambir Educational Colony, Lviv Region
3. School of Social Rehabilitation for Children, City of Kyiv
4. School of Social Rehabilitation for Children, Lviv Region

VI. State border guard service temporary holding facilities

1. Chop Temporary Holding Facility
2. Lviv Temporary Holding Facility
3. Special Premises at the Boryspil Airport